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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 A.T.,

11 Plaintiff,

12 v.

13 EVERETT SCHOOL DISTRICT, et  
14 al.,

15 Defendants.

CASE NO. C16-1536JLR

ORDER

16 **I. INTRODUCTION**

17 This matter comes before the court on Defendant Craig Verver's motion to dismiss  
18 Plaintiff A.T.'s complaint as untimely. (Mot. (Dkt. # 12).) A.T. opposes the motion (*see*  
19 *Resp. (Dkt. # 15)*), and Mr. Verver has filed a reply (*see Reply (Dkt. # 17)*). Having  
20 considered these submissions, the relevant portions of the record, and the applicable law,  
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1 and considering itself fully advised,<sup>1</sup> the court GRANTS Mr. Verver's motion and  
 2 GRANTS A.T. leave to amend her complaint, as detailed herein.

## 3 II. BACKGROUND<sup>2</sup>

4 A.T.<sup>3</sup> attended a high school in the Everett School District from 2001 to 2003.  
 5 (Am. Compl. (Dkt. # 7) ¶ 7.) Mr. Verver was one of A.T.'s teachers during the 2001-  
 6 2002 school year and the 2002-2003 school year. (*Id.*) A.T. was also a cabinet member  
 7 of the National Honor Society, for which Mr. Verver served as a faculty adviser. (*Id.*)  
 8 During the 2001-2002 school year, Mr. Verver singled out A.T. in class, teased her, and  
 9 gave her special attention. (*Id.* ¶ 9.) Mr. Verver told A.T. that she would need to take  
 10 "calculated risks" to be exceptional and extraordinary in order to stand out for college  
 11 admissions. (*Id.*) At the end of the school year, Mr. Verver encouraged A.T. to run for  
 12 honor-society president, a position that required working closely with him in his capacity  
 13 as faculty adviser. (*Id.* ¶ 10.) A.T. was elected honor-society president for the following  
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 16 <sup>1</sup> Neither party requested oral argument, and the court considers it unnecessary in this  
 instance. *See* Local Rules W.D. Wash. LCR 7(b)(4).

17 <sup>2</sup> The court bases its recitation of the facts on A.T.'s complaint and, for the purpose of  
 18 this order, accepts as true all "well-pleaded factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662,  
 679 (2009).

19 <sup>3</sup> A.T. has filed her complaint under a pseudonym. "[A] party may preserve his or her  
 20 anonymity in judicial proceedings in special circumstances when the party's need for anonymity  
 outweighs prejudice to the opposing party and the public's interest in knowing the party's  
 identity." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000).  
 21 "[A]llegations of sexual assault weigh in favor of using . . . initials in the caption" of a case. *R.P.*  
*v. Seattle Sch. Dist.*, No. C13-2218MJP, 2014 WL 639408, at \*1 (W.D. Wash. Feb. 18, 2014).  
 22 Further, none of the defendants raise an objection to A.T.'s use of initials. The court therefore  
 refers to A.T. by her preferred pseudonym throughout this order.

1 year, and Mr. Verver gave A.T. his personal contact information so that they could be in  
2 touch over the summer.

3 In October 2002, A.T. attended a school dance, after which she stayed to help  
4 clean up. (*Id.* ¶ 11) After the dance ended, Mr. Verver kept A.T. for hours and engaged  
5 her in conversation about their “unique[] relationship.” (*Id.*) Mr. Verver told A.T. that  
6 “he was worried about his role in her life and was envious of her parents because A.T.  
7 might leave him after graduation while she would always be her parents’ child.” (*Id.*)  
8 Mr. Verver expressed to A.T. that he was concerned about her future and protective  
9 regarding who she may choose to date or marry. (*Id.*) Mr. Verver also shared with A.T.  
10 that he was having marital problems. (*Id.*)

11 Mr. Verver later confided in A.T. that his wife was pregnant and that he was  
12 “crushed about the news.” (*Id.* ¶ 12.) A.T. also began confiding in Mr. Verver about her  
13 relationships with boys. (*Id.* ¶ 13.) During one conversation on this topic, A.T. told Mr.  
14 Verver that she was uncomfortable expressing physical boundaries. (*Id.*) In response,  
15 Mr. Verver sat next to A.T. and put his hand on her thigh. (*Id.*) Mr. Verver asked A.T.  
16 whether, if a date put his hand on her thigh, she would be able to tell him “no.” (*Id.*)

17 A.T. turned 18 on January 5, 2003. (*Id.* ¶ 14) Later that month, she visited Mr.  
18 Verver’s classroom. (*Id.*) Mr. Verver greeted A.T. with a hug and a kiss on the cheek.  
19 (*Id.*) The next time A.T. saw Mr. Verver, he asked her how she felt about the kiss he  
20 gave her. (*Id.*) A.T. told Mr. Verver that it made her nervous. (*Id.*) Mr. Verver kissed  
21 A.T. on the cheek again. (*Id.*)  
22

1 At the end of January 2013, A.T. was in Mr. Verver's classroom on a weekend.  
2 (*Id.* ¶ 15). Mr. Verver told A.T. he was going to "steal a kiss" and kissed A.T. on the  
3 mouth. (*Id.*) A.T. became "very upset" and felt like there was a misunderstanding  
4 between her and Mr. Verver. (*Id.*) Mr. Verver told A.T. that he was going to "steal  
5 another kiss," and he kissed her again. (*Id.*) Mr. Verver suggested that they move to the  
6 couch, and Mr. Verver kissed A.T. and put his hands up her shirt. (*Id.*) A.T. felt  
7 "powerless" and "scared" about making Mr. Verver angry. (*Id.*) When A.T. returned  
8 home later in the day, she "hid in the closet and cried uncontrollably." (*Id.*) A.T.  
9 considered switching out of Mr. Verver's class, but she was too afraid of the potential  
10 repercussions. (*Id.*) The next school day, Mr. Verver pulled A.T. aside and asked her to  
11 stop by before school to discuss what had happened between them. (*Id.*) Mr. Verver told  
12 A.T. it could never happen again, but then pulled her in and kissed her saying, "Well, we  
13 both knew we couldn't help ourselves." (*Id.*)

14 Sexual contact between A.T. and Mr. Verver continued to escalate. (*Id.* ¶ 16.) In  
15 April 2003, A.T. went to Mr. Verver's classroom to gather supplies for a car wash. (*Id.*)  
16 Mr. Verver produced a pack of condoms and asked A.T. to put one on him. (*Id.*) A.T.  
17 hesitated, and Mr. Verver asked her, "Do you want me to wear this? Then put it on me."  
18 (*Id.*) A.T. acquiesced, and the two had sexual intercourse. (*Id.*) After this encounter,  
19 Mr. Verver and A.T. had sex on multiple occasions in his classroom and in other  
20 locations in the school. (*Id.* ¶ 17.) A.T. told Mr. Verver several times that she did not  
21 want to continue. (*Id.*) A.T.'s complaint does not indicate when A.T. and Mr. Verver's  
22 final sexual encounter occurred, but A.T. does not allege any sexual contact after 2003.

1 In 2016, A.T. brought suit against Mr. Verver, the Everett School District, and  
2 district superintendent Carol Whitehead under 42 U.S.C. § 1983. A.T. claims that Mr.  
3 Verver sexually “groomed” and assaulted A.T. in violation of the Ninth and Fourteenth  
4 Amendments of the United States Constitution. (*Id.* ¶ 23.) A.T. seeks compensatory and  
5 punitive damages for the violation of her constitutional rights as well as “mental anguish  
6 and emotional distress.” (*Id.* ¶¶ 21-22.)

### 7 III. ANALYSIS

#### 8 A. Legal Standard

9 When considering a motion to dismiss under Federal Rule of Civil Procedure  
10 12(b)(6), the court construes the complaint in the light most favorable to the non-moving  
11 party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir.  
12 2005). The court must accept all well-pled facts as true and draw all reasonable  
13 inferences in favor of the plaintiff. *Wylar Summit P’ship v. Turner Broad. Sys., Inc.*, 135  
14 F.3d 658, 661 (9th Cir. 1998). “A claim may be dismissed under Rule 12(b)(6) on the  
15 ground that it is barred by the applicable statute of limitations only when ‘the running of  
16 the statute is apparent on the face of the complaint.’” *Von Saher v. Norton Simon*  
17 *Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2009) (quoting *Huynh v. Chase*  
18 *Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)).

#### 19 B. Statute of Limitations

20 The statute of limitations for a Section 1983 claim brought in a Washington forum  
21 is three years. *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002).  
22 The limitations period begins to run on the date on which the plaintiff’s claim accrues, or

1 “when the plaintiff knows or has reason to know of the injury which is the basis of the  
2 action.” *Lukovsky v. City and Cty. of S.F.*, 535 F.3d 1044, 1048 (9th Cir. 2008). Mr.  
3 Verver contends that A.T.’s complaint alleges emotional injury occurring in 2003,  
4 making her 2016 complaint untimely. (Mot. at 12.) Mr. Verver points specifically to  
5 A.T.’s allegations that, after her sexual encounters with Mr. Verver, she felt fear, guilt,  
6 and shame, as evidence that she was aware of her injury during her high-school years.  
7 (Reply at 10.)

8 A.T. counters that, in spite of her allegations that she reacted adversely to Mr.  
9 Verver’s sexual advances, the complaint is silent on when A.T. knew of the particular  
10 injury for which she is seeking relief. (Resp. at 6.) A.T. argues that, after further  
11 discovery, she will be able to show that she did not know of her injury until the fall of  
12 2015, at which time she experienced a panic attack and first realized that she was a victim  
13 of sexual abuse. (*Id.* at 13-14.)

14 This court has recognized “the possibility that a person who has been in a sexually  
15 abusive relationship may not realize that he or she is injured until many years after the  
16 sexual act occurred.” *J.I. v. United States*, No. C06-5674RJB, 2007 WL 983138, at \*5  
17 (W.D. Wash. March 26, 2007) (citing *Simmons v. United States*, 805 F.2d 1363, 1368  
18 (9th Cir. 1986)). Such deferred discovery of an injury may be grounds for delaying  
19 accrual of a cause of action related to sexual abuse until years after the abusive  
20 relationship has ended. *Simmons*, 805 F.2d at 1367-68.

21 If the court were to accept as true A.T.’s assertion that she did not know of her  
22 injury until 2015, then her complaint would survive Mr. Verver’s motion to dismiss. But

1 this allegation does not appear on the face of A.T.'s complaint. (*See generally* Am.  
2 Compl.) In fact, all of A.T.'s allegations are confined to the period from 2001 to 2003.  
3 (*See id.*) The first mention of A.T.'s 2015 panic attack is in her response to Mr. Verver's  
4 motion to dismiss. (Resp. at 13-14.) Considering only the face of A.T.'s complaint, then,  
5 it is apparent that the statute of limitations has run. The court therefore dismisses A.T.'s  
6 claim against Mr. Verver as untimely.

### 7 **C. Leave to Amend**

8 As a general rule, when a court grants a motion to dismiss, the court should  
9 dismiss the complaint with leave to amend. *See Eminence Capital, LLC v. Aspeon, Inc.*,  
10 316 F.3d 1048, 1051-52 (9th Cir. 2003) (citing Fed. R. Civ. P. 15(a)). The policy  
11 favoring amendment is to be applied with "extreme liberality." *Id.* at 1051. In  
12 determining whether dismissal without leave to amend is appropriate, courts consider  
13 such factors as undue delay, bad faith or dilatory motive on the part of the movant,  
14 repeated failure to cure deficiencies by amendments previously allowed, undue prejudice  
15 to the opposing party by virtue of allowance of the amendment, and futility of  
16 amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). But "[a]bsent prejudice, or a  
17 strong showing of any of the remaining *Foman* factors, there exists a *presumption* under  
18 Rule 15(a) in favor of granting leave to amend." *Eminence*, 316 F.3d at 1052 (emphasis  
19 in original).

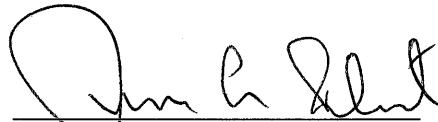
20 Mr. Verver offers no argument to overcome the strong presumption in favor of  
21 granting A.T. leave to amend her complaint. Further, where "the plaintiff offers to  
22 provide additional evidence that would add necessary details to an amended complaint

1 and such [an] offer is made in good faith, leave to amend should be granted.” *Broudo v.*  
2 *Dura Pharm.*, 339 F.3d 933, 941 (9th Cir. 2003). In her response to Mr. Verver’s  
3 motion, A.T. offered facts about the discovery of her injury that would allow the court to  
4 draw a reasonable inference that her complaint is timely. (Resp. 13-14.) The court  
5 therefore grants A.T. leave to amend her complaint within 20 days of the entry of this  
6 order. If A.T. does not timely amend her complaint to remedy the deficiencies identified  
7 herein, the court will dismiss her claims against Mr. Verver with prejudice.

#### 8 IV. CONCLUSION

9 The court GRANTS Mr. Verver’s motion to dismiss (Dkt. # 12) and GRANTS  
10 A.T. leave to amend her complaint within 20 days of the entry of this order.

11 Dated this 28<sup>th</sup> day of February, 2017.

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14 JAMES L. ROBART  
United States District Judge  
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